1952.

File No. Indus. Relations II/52 (N)

Legal Department,

B. **BRANCH**

P 2 (E)

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Subject:—

Notifications under the Bombay Industrial Relations Act, 1946.

File No. Indus. Relations II/52(N)

Gen. 191

276-B

2939 dt. 11-2-52.

A.S. (L.)

In this case, as a result of the judgment of the Industrial Court in Appeal (I.C.) No.102 of 1951 and No.121 and 179 of 1951 regarding the interpretation of section 46 of the Bombay Industrial Relations Act, 1946, the Labour and Housing Department has suggested an amendment of the said section 46 by the issue of an Ordinance as it is thought that the interpretation put upon the section by the Industrial Court is favourable to employers and the employers may exploit the judgment in making changes in industrial matters without giving notice to employees. The Secretary, Labour and Housing Department, however, is not in favour of rushing into an Ordinance at once till the next session of the Legislature meets. He thinks that even though an employer is at liberty to make a change in industrial matters specified in Schedule II to the Act without giving notice to an employee as held by the Industrial Court, still such an employer can be punished under section 109 of the Act as any change made without a notice is made punishable under that section, and the Secretary, Labour and Housing Department thinks that in the meanwhile recourse to the penalty provision may be resorted to to act as deterrent upon employers.

2. The short point for the determination of the Industrial Court in Appeal was whether any change in any industrial matter specified in Schedule II to the Act can be effected without giving notice to employees. The similar point had arisen in two other cases where the Labour Court Jalgaon, has held that such a change can be effected without a notice and such change cannot be said to be illegal change in view of the fact that no

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notice was given to employees. The Industrial Court after referring to the various contingencies contemplated in section 46 read with section 42 and the definition of the word "change" in section 3(8) of the Act has come to the conclusion that there is no legal liability upon an employer to give notice of a change to employees or to a representative union of employees if he makes any change in industrial matters referred to in Schedule II of the Act, and since such a change does not amount to illegal change within the meaning of section 46 of the Act the provisions of section 106 of the Act are not attracted and an employer who makes an illegal change cannot be punished with fine under that section. The Industrial Court has, however, held that such a procedure is not without any remedy under the Act as section 109 will apply to a case where an employer makes change in industrial matter without notice to employees, and he can be punished for contravening the provisions of the Act.

Reply may be -

The view taken by the Secretary, Labour and Housing Department, is correct. The amendment of the Act, being of material importance, should not be made by an ordinance, but should be, if considered necessary, by an amending bill after the new House meets.

Id/-
11/2

Addl Secy. Id/-J.R.D. 11/2

U.R. to L.& H.D.No. 2268 dated 12-2-52.

BKS. 28/6/ 4c.